

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/018/2017
(Present: V.V. Sathyarajan)
Dated: 28th April 2017

Appellant : Sri. Arun R Chandran,
Energy Head,
Indus Towers Ltd.,
Palarivattom,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd,
Kollam

ORDER

Background of the case:

The appellant represents M/s Indus Towers Ltd., a company providing passive infra structure service to telecommunication providers. The consumer number of the appellant's three phase service connection is 9218 with tariff LT VI F which is coming under the jurisdiction of Electrical Section, Cantonment, Kollam. The appellant is paying the current charges regularly without any dues or delay. But the respondent as per the invoice dated 02-02-2016 directed the appellant to remit an amount of Rs. 1,29,338.00 being the short assessment based on the findings that the meter was faulty during the period from 01-01-2014 to 31-07-2014. Even though an objection against the above demand was filed before the Assistant Engineer, he rejected the same without quoting any valid reason or regulations, instead revised the short assessment to Rs. 73,528.00.

So the appellant had approached the Hon'ble CGRF (SR) by filing a petition No. 231/2016. The Forum dismissed the petition and directed to remit the short assessment bill. Aggrieved against this, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

1) The meter of the above said consumer number was declared as faulty during the month of 11/2013 and replaced on 13-06-2014. The monthly bills for the period from 11/2013 to 06/2014 were issued for the previous average consumption recorded in the meter and the appellant had paid the bill amount. The status of the meter was recorded in the bills as working up to 10/2013 and bills were issued as per the actual consumption recorded in the meter.

It is understood that the short assessment bill was issued only due to the hike in consumption recorded after replacement of the faulty meter. The provision for taking the average consumption after the replacement of faulty meter for the assessment of the meter faulty period is only in the case where required details for the previous period are not available. And not depend on the difference in consumption before and after the meter faulty period in favour of the licensee or the consumer.

2) As per the Regulation 125(1), in the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found or reported defective. Provided that, the average shall be computed from the three billing cycles after the meter is replaced, if required details pertaining to previous billing cycles are not available. In the instant case, the previous readings of the meter faulty period are available, average fixed as per the concerned regulations for the assessment of the meter faulty period, bills were issued for the average consumption and payments were made accordingly. Hence the short assessment based on the average after the faulty meter changing period is not legal and sustainable.

3) Any rules or regulations in the Electricity Act or Electricity Supply Code not supporting to reassess a consumer merely based on the dip in consumption in a previous billing period by declaring the meter as sluggish/faulty after a long period.

4) As per regulation 125(2) of Electricity Supply Code, 2014, if the meter is found defective, charges based on the average consumption shall be levied only for a maximum period of two billing cycles during which time the licensee shall replace the defective or damaged meter with a correct meter. In the present case the licensee failed to replace the faulty meter within the stipulated time and hence the short assessment bill is not sustainable.

5) The Honourable CGRF pointed out in the order that on going through the meter reading register it is seen that door lock was reported from 12/2013 to 01/02/2014 (12 months). But the licensee did not issue any notice regarding the door lock as per the Regulations concerned and hence the door lock status was not correct. The meter is easily accessible at

any time for reading and inspection. The Forum not commented anything about the above fact.

6) The appellant strongly believes that “The findings of the Forum that, the petitioner is not produced any evidence to prove the reason for the low consumption and due to the dip in consumption in a previous period and hence the meter might had been faulty are not in order”. The order of the Forum to dismiss the petition is not justified by any Regulations of the Code or any Sections of the Act. The Honourable Forum justified the short assessment for compensating the loss sustained to the licensee if any due to the serious lapses of the licensee people in meter reading and issuing correct bill in time without supporting by any Act or Code.

7) The Honourable Electricity Ombudsman may please be noted that a sluggish meter is not defined anywhere in the Act or Code. The CGRF Central Region, Ernakulam viewed this fact in a similar case of short assessment and commented that charging the consumer based on the sluggishness of the meter without changing the faulty meter then and there, as per rules, is illegal.

Considering all the above, it is hereby prayed before this Honourable Kerala Electricity Ombudsman to quash the order of the Honourable CGRF (Southern Region) and cancel the short assessment bill issued illegally by the Assistant Engineer, Electrical Section, Cantonment Kollam.

Arguments of the respondent:

1. Consumer no. 9218 is a service connection in LT VI F tariff, whose registered consumer in one Mr. Jayapal Menon.

2. The monthly consumption of the consumer was around 5500 units during the period from October 2010. But the consumption drastically reduced to around 300 or lesser after December 2012. Since the meter reading official considered the same as quiet normal, the meter was neither changed nor declared faulty. There was even one instance of a monthly consumption around 800 units, but no action was taken. The appellant also did not have made any remark upon receiving such very low electricity bills, but happily enjoyed the benefit.

3. In 10/2013, the premises was locked and hence the meter reading could not be taken for billing. Bill was issued based on average consumption. In the subsequent month, the recorded cumulative consumption for two months was 5750 units (i.e. 2875 units/month).

4. Again in 30-12-2013 and 01-02-2014, the premises was locked and the appellant was issued bills prepared for the average consumption of 2069 units.

5. On 05-03-2014, the meter displayed a reading of 238730, which meant a cumulative consumption of 3668 units (i.e., 1223 units per month). Thus the meter was declared faulty and hence the average consumption of 2069 units was billed.

6. In the subsequent months also, the meter displayed the same reading 238730 and the consumer was served bills based on the same average consumption of 2069 units.

7. On 13-6-2014, the meter was replaced with a new meter and thereafter the monthly consumption of the appellant was shot up to around 4000 plus units immediately. It may kindly be noted that the appellant has neither increased nor reduced their connected load from the registered 12300 Watts during the period from October 2010 till October 2014. They have not changed their style of operation in the said period, - i.e., they were using electricity for mobile tower throughout the period.

8. It is highly suspected that the meter had been under recording after 04-12-2012 but the meter reading officials had considered the recorded consumption as normal. The consumer was fully enjoying the benefit of reduced recorded, consumption during this period.

9. Unfortunately the meter ceased recording in 3/2014 and hence the reading officials were forced to prepare bills based on the average consumption for the next six months.

10. The Regional Audit Officer, Kollam vide their inspection report dated 30-09-2015 detected this issue and brought the same before the Assistant Engineer, Electrical Section, Cantonment. The latter has demanded a bill amounting to Rs. 1,29,338.00 calculated for seven months (1/2014 to 7/2014) for the shortfall of reading as per Regulation 125 of Kerala Electricity Supply Code, 2014. Later on the complaint by the consumer, the Assistant Engineer, Electrical Section, Cantonment has reduced the period of assessment, resulting in a reduction in the short assessment to Rs. 73,528.00. This was considering the arguments by the appellant.

11. The reading register of the consumer for the period from 29-10-2010 to 04-10-2014 was submitted before the CCRF (SR). It is very clear that the average monthly consumption of the appellant was around 4000 units for the period from 10/2010 to 12/2012 (old meter), and for 7/2014 to 10/2014 (replaced meter). The consumption in between was drastically low, but unfortunately the reading officials did not inspect the meter, even after repeated requests from the billing officials. The appellant was well enjoying this reduced recording. But once the meter reading official was compelled to declare the meter faulty; bills were issued based on the average consumption. The Regional Audit Officer also did not extend the period of short assessment beyond the meter faulty period (1/2014 to

7/2014) even though the recorded consumption prior to this period was well below the average consumption after the meter was changed. Hence the assessment in the served bill is well below the average consumption after the actual consumption of electricity by the consumer. Relevant pages of inspection report by the Regional Audit Officer, Kollam was produced before the CGRF.

12. During the hearing, the Hon'ble CGRF (SR) has directed the opposite party to get the meter tested, but unfortunately the meter could not be located for testing. The matter was intimated to the Hon'ble Forum in writing.

13. Considering all these points raised by the opposite party and after examining all the evidences produced before the Forum, the Hon'ble CGRF(S), KSEB has viewed that the bill issued by the licensee is legal and sustainable. Thus the case was dismissed.

14. Hence it is most respectfully prayed before the Hon'ble Authority to:

1. Dispose of the appeal petition of the appellant on merits.
2. Allow the opposite parties to extend the period of short assessment for the entire period of meter faulty.

Analysis and findings:

The hearing of the case was conducted on 11-04-2017 in my chamber at Edappally and Sri. M.Y. George represented for the appellant's side and Sri Sunil Kumar V.V., Assistant Executive Engineer, Electrical Sub Division, Kottarakkara appeared for the respondent's side. On examining the petition and the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following conclusions leading to the decision.

The contention of the appellant is that any testing of the meter was done before declaring the meter as faulty. The finding of the Assessing Officer that the meter was faulty during the period from 01/2014 to 07/2014 after a period of 18 months is only an imagination and hence the short assessment bill is not sustainable. On the other hand the respondent argued that the consumption pattern confirmed that the meter became faulty during December 2012 itself. So, average energy consumption was arrived as per Regulation 125(1) of the Kerala Electricity Supply Code, 2014 and issued demand as contemplated in Regulation 125(3) of Supply Code, 2014. Further, the appellant could not produce any evidence to show that there was variation in the consumption pattern in their premises.

The point to be decided in this case is as to whether the issuance of short assessment bill for Rs. 73,528.00 to the appellant after reassessing on the basis of average consumption of 4089 units per month is in order or not?

On going through the records it can be seen that the respondent has issued monthly bills based on the recorded consumption and the appellant remitted the same without any fail. It is to be noted that the respondent has detected that the meter was faulty for the period from 01/2014 to 07/2014 and a lesser consumption was recorded during that period. It is pertinent to note that even without conducting any inspection or checking the appellant's meter, the respondent declared the meter as sluggish for the previous period due to the reduction in consumption. Regulation 125 of Supply Code, 2014 stipulates the procedure for billing in the case of defective or damaged meter. **"In the case of defective or damaged meter, the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately preceding the date of meter being found or reported defective.**

Provided that the average shall be computed from the 3 billing cycles after the meter is replaced if required details pertaining to previous billing cycles are not available".

The respondent has not produced any test report in connection with the testing of disputed meter at the laboratories accredited by the NABL. **Regulation 115 (9) says that "in the case the meter is found to be faulty, revision of bill on the basis of test report shall be done for a maximum period of 6 months or from the date of last testing, whichever is shorter and the excess or deficit charges on account of such revision shall be adjusted in two subsequent bills".** Here in this case, the respondent declared the meter as faulty that too even without conducting any testing. There is no justification for issuing such a demand for a previous period from 01/2014 to 07/2014 as there is no allegation of any willful misuse by the appellant.

According to Clause 18(2) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, **the testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of previous years or if there is consumers complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of the consumer meters up to 650 Volts.** In the instant case, the respondent has not followed the procedures prescribed above before charging the appellant as meter faulty. Further, there is no mechanism for the appellant to know whether the meter is working properly or not.

The assessment made in this case is relying on succeeding months' consumption which was made after a lapse of 18 months. The respondent's contention is that the meter showed decrease in consumption which might have been a result of meter becoming sluggish. It is found that the appellant was billed for an average consumption of 2069 units for the months in dispute and the appellant remitted the amount. Hence the argument of sluggishness before 01/2014 can not be proved conclusively without conducting testing of the meter. The statutory requirement of testing of the meter in an accredited lab or with a standard reference meter with better accuracy class is not done before declaring the meter as faulty. There is patent illegality in issuing the short assessment bill to the appellant. It is pertinent to note that average of the previous billing period was fixed, bills were issued and payments made accordingly for the alleged meter faulty period by the appellant. Without complying with the statutory formalities, the assessment now made in this case is not sustainable before law and liable to be quashed.

As per Regulation 118 of the Supply Code, 2014, ***“If a meter is found damaged either on the complaint of the consumer or upon inspection by the licensee, the meter shall be immediately be replaced by the licensee with a correct meter and if it is not possible the supply shall be restored by the licensee, bypassing the damaged meter, after ensuring that necessary preventive action at site is taken to avoid future damage and obtaining an undertaking from the consumer to make good the loss if any sustained by the licensee.”***

In this case, the respondent assumed that the meter is sluggish from 12/2012 and it was replaced only on 13-06-2014 without conducting testing of the alleged faulty meter in an accredited lab. According to the respondent the monthly consumption shows enormous decrease from 01/2014 onwards. In the case of defective or damaged meter the consumer shall be billed on the basis of average consumption of the past 3 billing cycles immediately succeeding the date of meter being found or reported defective. If there is an omission or error on the part of respondent, it has to be set right in time with a notice to the appellant giving him an opportunity for being heard. The appellant is bound to pay the electricity charges for his actual consumption.

Here in this case, the respondent argued that the appellant failed to produce any evidence to show that there was variation in their consumption pattern. Though the appellant has not given any evidence about the conditions of working and occupancy of concerned premises during the said period, the short assessment bill preferred for the period in dispute based on presumption only that the meter was sluggish from 12/2012 onwards and hence is not sustainable. There is no material to show that the respondent has conducted any detailed checking of the appellant's meter. In this background, the issuance of short assessment bill on the appellant merely

on the basis of presumption and succeeding consumption pattern cannot be justified before law and liable to be quashed.

Decision

In view of the above findings the revised short assessment as per the order of CGRF for Rs. 73,528 is hereby quashed. The order of CGRF in OP No. 231/2016 dated 30-12-2016 is set aside. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/018/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Arun R Chandran, Energy Head, Indus Towers Ltd., Palarivattom, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kollam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.